

STATE OF MINNESOTA

IN SUPREME COURT

C1-81-1206 & C1-84-2140

ORDER FOR HEARING TO CONSIDER PROPOSED
AMENDMENTS TO THE RULES RELATING TO
REGISTRATION OF ATTORNEYS AND THE RULES
ON LAWYERS PROFESSIONAL RESPONSIBILITY

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on May 29, 1996 at 9:00 a.m., to consider the petitions of the Lawyers Professional Responsibility Board and the Board of Law Examiners to amend the Rules Relating to Registration of Attorneys, and to consider the petition of the Lawyers Professional Responsibility Board to amend the Rules on Lawyers Professional Responsibility. Copies of the petitions containing the proposed amendments are annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 245 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before May 24, 1996 and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before May 24, 1996.

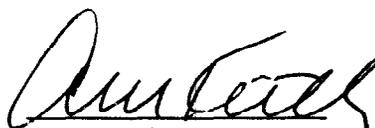
Dated: March 19, 1996

BY THE COURT:

OFFICE OF
APPELLATE COURTS

MAR 19 1996

FILED



A.M. Keith
Chief Justice

MSBA



OFFICE OF
APPELLATE COURTS

MAY 9 1996

FILED

Minnesota
State Bar
Association

May 8, 1996

514 Nicollet Mall
Suite 300
Minneapolis, MN 55402-1021

Telephone
612-333-1183
In-state
1-800-882-MSBA
Facsimile
612-333-4927

President
Lewis A. Remele, Jr.
Minneapolis

President-Elect
John N. Nys
Duluth

Secretary
Mark W. Gehan, Jr.
St. Paul

Treasurer
Sheryl Ramstad Hvass
Minneapolis

*Executive Committee
Members At-Large*
Thomas A. Clure
Duluth
Gregory N. Gray
St. Paul
Jarvis C. Jones
Minneapolis

Tim Groshens
Executive Director

Mary Jo Ruff
Associate Executive Director

Frederick K. Grittner, Clerk of the Appellate Court
25 Constitution Avenue, Suite 245
St. Paul MN 55155

Dear Mr. Grittner:

I am writing as President of the Minnesota State Bar Association to communicate the Association's support of the petitions of the Lawyers Professional Responsibility Board and the Board of Law Examiners to amend the Rules Relating to Registration of Attorneys. The Minnesota State Bar Association recognizes the important work carried on by both Boards to regulate admission to practice and lawyer discipline. The Association recognizes that additional fees are necessary to continue the important and necessary work of both Boards.

Lawyers Professional Responsibility Board Petition

The MSBA Board of Governors and the MSBA House of Delegates considered the petition of the Lawyers Professional Responsibility Board in January and voted to support it. The Minnesota State Bar Association has a long-standing commitment to the work of the Lawyers Professional Responsibility Board in handling lawyer discipline and recognizes the need for adequate funding. The Association believes the proposed fee increase to be reasonable in supporting increased costs to the discipline system associated with inflation, increased rental costs and the increased demand for services.

Board of Law Examiners Petition

The Board of Governors considered the petition of the Board of Law Examiners in April and voted to support it. The MSBA has a similar long-standing commitment to the work of the Board of Law Examiners in regulating admission to the bar. The Association recognizes the important work of the

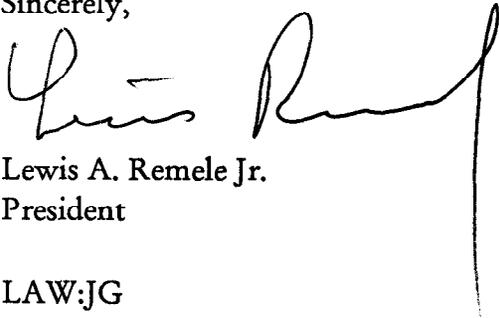
Frederick K. Grittner

May 8, 1996

Page Two

Board in maintaining proper standards of admission, and believes the entire profession and the public benefit from a well-maintained system of entry into practice. The MSBA believes the proposed fee increases to be reasonable to cover the costs of inflation, increased costs of exam administration, increased rental costs, increased costs for investigating character and fitness issues, and increased costs for special testing accommodations of disabled applicants.

Sincerely,

A handwritten signature in black ink, appearing to read "Lewis Remele Jr.", with a long vertical line extending downwards from the end of the signature.

Lewis A. Remele Jr.
President

LAW:JG

DIRECTOR
MARCIA A. JOHNSON
FIRST ASSISTANT DIRECTOR
KENNETH L. JORGENSEN
ASSISTANT DIRECTORS
CANDICE M. HOJAN
MARTIN A. COLE
BETTY M. SHAW
PATRICK R. BURNS
TIMOTHY M. BURKE
HENRY C. GRANISON
CRAIG D. KLAUSING
ERIC T. COOPERSTEIN

OFFICE OF
LAWYERS PROFESSIONAL RESPONSIBILITY

MINNESOTA JUDICIAL CENTER
25 CONSTITUTION AVENUE
SUITE 105
ST. PAUL, MINNESOTA 55155-1500
TELEPHONE (612) 296-3952
TOLL-FREE 1-800-657-3601
FAX (612) 297-5801

OFFICE OF
APPELLATE COURTS

MAR 25 1996

FILED

March 25, 1996

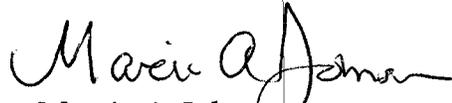
Office of Appellate Courts
25 Constitution Avenue
Room 305
St. Paul, MN 55155

Re: In Re Petition of the Lawyers Professional Responsibility Board
for Amendment of the Rules on Lawyers Professional Responsibility
Supreme Court File No. C1-84-2140

Dear Clerk:

Enclosed are the original and eight copies of a Supplementary Petition of the Lawyers Professional Responsibility Board to Amend the Rules on Lawyers Professional Responsibility.

Very truly yours,


Marcia A. Johnson
Director

tt

Enclosures

cc: Honorable Alan C. Page
Honorable M. Jeanne Coyne

FILE NO. C1-84-2140

STATE OF MINNESOTA

IN SUPREME COURT

OFFICE OF
APPELLATE COURTS

MAR 25 1996

FILED

In Re Amendment of the Rules on
Lawyers Professional Responsibility.

**SUPPLEMENTARY PETITION OF
THE LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD
TO AMEND THE RULES ON
LAWYERS PROFESSIONAL
RESPONSIBILITY**

Petitioner, Lawyers Professional Responsibility Board (LPRB), has filed a February 12, 1996, petition to amend the Rules on Lawyers Professional Responsibility (RLPR). Petitioner supplements said petition by requesting: (3) deleting the reference in Rule 9(b)(2) to a conditional admission. In support of this supplementary petition the LPRB would show the following:

13. By Supreme Court order effective January 1, 1989, the Court deleted what had previously been Rule 13(b), RLPR, which provided that the respondent could tender a conditional admission as an answer to a petition for disciplinary action.

14. At that time, the conditional admission provision of Rule 9(b)(2) was inadvertently overlooked. Since there is no rational for having a provision for conditional admission of charges, the LPRB respectfully recommends and requests this Court to amend Rule 9(b), RLPR, as follows:

(b) Admission of Charges. The lawyer may, ~~if so desired:~~

(1) ~~Admit some or all charges; or,~~

(2) ~~Tender an admission of some or all charges conditioned upon a stated disposition.~~

If a lawyer makes such an admission ~~or tender~~, the Director may proceed under Rule 10(b).

Based upon the foregoing, the Lawyers Professional Responsibility Board respectively requests this Honorable Court to amend the rules as proposed in paragraph 14 above.

Dated: March 25, 1996.

Gregory M. Bistram by MAJ
GREGORY M. BISTRAM, CHAIR
LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD
Attorney No. 8503
25 Constitution Avenue, Suite 105
St. Paul, MN 55155-1500
(612) 296-3952

and

Marcia A. Johnson
MARCIA A. JOHNSON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 182333

David C. Logue

Attorney at Law
1395 W. Jessamine #312
St. Paul, MN 55108
(612) 647-9484

OFFICE OF
APPELLATE COURTS

MAY 28 1996

FILED

May 22, 1996

Minnesota Supreme Court
% Frederick Grittner
Clerk of the Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

RE: Court File Nos. C1-81-1206 & C1-84-2140, Proposed Amendments to the Rules on Lawyers Professional Responsibility.

Dear Justices,

I am writing this letter to comment on the Lawyers Professional Responsibility Board's petition to amend the Rules of Lawyers Professional Responsibility to add a new Rule 30. I am opposed to the addition of the new Rule 30 which would allow the Director's Office to request an administrative suspension for any attorney, licensed to practice in the State of Minnesota, that is in arrears in payment of maintenance or child support for several reasons.

First, such a remedy is excessive. The public agencies already have sufficient remedies available to them to address problems in the area of collecting outstanding support obligations including; obtaining a judgment for the arrearage amount and the suspension of the offending party's driver's license.

Second, suspending an attorney's license for being in arrears is counterproductive as it deprives that attorney of the ability to earn a living and further deprives that individual of any possibility of erasing the arrears.

Finally, such a rule is beyond the scope of both the Court's and the Board's power and authority. This proposed rule exceeds the intended purpose of the Lawyers Professional Responsibility Rules. These Rules were created and adopted to protect the public, the attorney, and the profession from an individual attorney's disability or unprofessional conduct. Being in arrears on either maintenance or child support obligations does not qualify as a disability or unprofessional conduct. Failure to meet ones support obligation is no different than ones failure to meet any debt obligation and therefore should not be treated any differently.

This proposed rule is patently unfair and I would urge this Court not to adopt it as an addition to the Lawyers Professional Responsibility Rules. Thank you for allowing me this opportunity to address the Court on this matter.

Sincerely,



David C. Logue
Attorney Registration #259317
1395 W. Jessamine #312
St. Paul, MN 55108
(612) 647-9484

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT COURT



JUDGE MARILYN J. JUSTMAN
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487
(612) 348-8224
FAX (612) 348-2131

C1-84-2140

May 13, 1996

OFFICE OF
APPELLATE COURTS

MAY 24 1996

FILED

Mr. Frederick Grittner
Clerk of Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, Mn. 55155

Re: Proposed increase in registration fees for judicial officers.

Dear Mr. Grittner:

It has come to my attention that the Lawyers Professional Responsibility Board and the Board of Law Examiners is requesting amendment of rule to permit an increase in registration fees for Minnesota attorneys and judges.

As a judge of the District Court, I oppose the proposed change. Furthermore, I write to request that judges be exempt entirely from a registration fee. Judges salaries have been frozen, on an absolute basis, for 6 years now. It strikes me as peculiar that our own court system, through this proposed increase in fee, appears to only add to the financial burdens already facing us. This is particularly true for those of us (like me), who do not have a second wage earner in the family.

I respectfully request that the fee increase be denied and further, that the fee requirement for judges be eliminated altogether.

Sincerely,


Marilyn J. Justman

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT COURT



JACK NORDBY
JUDGE
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487-0421
(612) 348-3502
FAX (612) 348-2131

April 16, 1996

Mr. Frederick Grittner
Clerk of Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, Minn. 55155

OFFICE OF
APPELLATE COURTS

APR 17 1996

FILED

Re: Petitions of the Lawyers Professional Responsibility Board and Board of Law Examiners For Amendment of Rules. Nos. C1-81-1206, C1-84-2140

Dear Mr. Grittner,

The Court's order of March 19, 1996, invites response to the proposed increase in registration fees, which principally fund these agencies. I write to oppose the petitions.

Instead, I request that Rule 2 be amended to eliminate the requirement that district judges pay these fees at all, by deleting the phrase "and those members of the judiciary who are required to be admitted to practice as a prerequisite to holding office," or by a proviso excluding district judges.

I offer several reasons:

1) These Boards have no authority over judges, who are subject to the Board on Judicial Standards.

2) Registration fees are properly designed and collected for the benefit and regulation of the practicing bar, but judges are specifically and explicitly forbidden to practice law. Minn. Stat. Sec. 484.06. It is illogical and unfair to require judges to pay for a license they are disabled from using. Note the ironic anomaly that the penalty for non-payment is suspension of the right to practice law (Rules 3,5) which has already been denied to judges by the statute. (It is persuasively arguable, therefore, that a judge who fails or refuses to pay the registration fee is subject to no penalty.)

3) The fees are a pre-requisite to licensure. The necessity that judges be licensed lawyers, of course, results from construction (strained and artificial construction) of the requirement that they be "learned in the law." See Sylvestre v. State, 298 Minn. 142, 214 N.W.2d 658 (1973), In re Daly, 294 Minn. 351, 200 N.W.2d 913 (1972). Failure to pay fees results in suspension of the license and therefore, supposedly, of the ability to be a judge. This raises troublesome questions, such as: Are the actions of a suspended judge invalid? (Surely they are at least liable to that claim). Is it constitutionally permissible thus to disable a public official who has been elected by the voters, for reasons unrelated to competency or integrity?

4) The suspension is automatic under Rule 3, and this suspension can (and does) occur without the knowledge of or notice to the judge affected. This is intolerable and demeaning. What of the rights of litigants who appear before such judges, the results in whose cases may be subject to expensive and time-consuming challenge?

5) District judges's salaries are inadequate, entirely uncertain of increase, and a serious disincentive to qualified persons to seek or retain such positions. Increasing the expense of the position only aggravates this unhappy fact. These fees are, to some of us at least, a hardship. Unlike practicing lawyers, judges cannot recover the costs from clients, or otherwise from the benefits of the license.

6) It is, I think, doubtful that the Supreme Court has the authority in effect to impose a tax upon judges generally (see Minn. Stat. Chapter 480, and Minn. Const. Art. VI), especially when that tax falls disproportionately on judges of inferior courts who have inferior salaries. Moreover, an increase in the fees diminishes a judge's compensation, in apparent violation of Minn. Const. Art. VI, Section 5. This power is not part of the Court's inherent authority to regulate the bar. In re Petition for Integration of Bar of Minnesota, 216 Minn. 195, 12 N.W.2d 515 (1944). Indeed this Court is "without power to increase the qualifications prescribed by the constitution," State ex rel. Boedigheimer v. Welter, 208 Minn. 338, 293 N.W. 914 (1940), but this is what it does when it declares that a person may not be a judge who does not pay registration fees, by the indirect device of making this tribute one aspect of being "learned in the law."

7) Because judges act as referees in disciplinary cases their financial contribution to the agencies creates an apparent conflict of interest. That is, a referee in a direct way pays part of the salary and expenses of the person prosecuting a respondent over whom he sits in judgment. This is philosophically repugnant at best.

8) Judges, if they are alert and competent, already perform a significant part of the business of discipline, by imposing controls and sanctions on the lawyers appearing before them. They

make a non-monetary but important contribution to the underlying cause of professionalism.

9) For about twenty five years, a large part of my law practice was the defense of lawyers in disciplinary proceedings. When I began, the entire prosecutorial function was performed by one retired or semi-retired lawyer, who as I recall had some part-time assistance. May we compare this to today's multi-million-dollar Board budget and ask: Has either the size of the bar or the quality of professionalism increased in proportion to the Director's budget? Or: Were lawyers more professional in those earlier days, or was widespread chicanery undetected? Who is there to challenge, or even review from an altogether disinterested perspective, the extraordinarily great and increasing expenditure we make for discipline? (Even, I might say, when we are niggardly in providing security funds for injured clients.) I do not know the answers, but I suggest it is not unreasonable to question the overall cost of the programs for which the fees in question here are extracted.

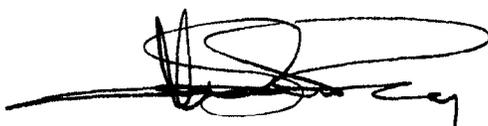
I believe that we are spending far, far too much (by, I daresay, a factor of two or three at least) on the Lawyers Board; and this at a time of such budgetary constraints that district judges are constantly bedeviled into making economies, even to eliminate lawbooks from chambers. The Board, meanwhile, moves to new quarters in the Judicial Center, the cost of which is a "significant factor" in the proposed increase, and will go up farther. (Lawyers Board's Statement in Support of Petition, III.) Unlike judges, the Board's employees receive cost of living and merit increases. We are told the fee increase provides, inter alia, for a future "law clerk or clerical position if necessary"; that is, we are asked to fund both steeply escalating rent and currently unnecessary positions.

It is particularly alarming and unacceptable, to me at least and I suspect to other judges, to notice that the Board's budget is approximately equal to the salaries of twenty-eight or twenty-nine district judges, (if, as the petition indicates, the \$404,893 "carry forward" is "equal to 17 per cent of the budget"), to do a job done for a tiny fraction of that cost in the not-very-distant past. It appears to me that we have allowed a legitimate concern with regulation of the bar, and the imagined public relations benefits of doing this in an aggressive and visible way, to create and overfeed an organism that like all such institutions has now taken on an increasingly costly life of its own, with an inexorable appetite. (I should add that the lawyers with whom I dealt in the Director's office were highly competent and professional and, so far as I know, not at all overpaid. It is the institutional growth and expense I question.) Please send me copies of the Boards's budgets that were annexed to the petitions but not published.

For these reasons, I urge the Court to remove the requirement that judges pay registration fees.

I submit this as an individual and I do not purport to speak for any other judge or group of judges.

Yours Truly,



A handwritten signature in black ink, appearing to read 'Jack S. Nordby', with a long vertical line extending downwards from the end of the signature.

Jack S. Nordby

JSN/pam

MAY 24 1996

FILED

FILE NO. C1-84-2140
STATE OF MINNESOTA
IN SUPREME COURT

In Re Amendment of the Rules on
Lawyers Professional Responsibility
(Rule 24)

STATEMENT OF MARC M. BERG

TO: THE SUPREME COURT OF THE STATE OF MINNESOTA:

This Court's Order of March 19, 1996, invited the Bar to submit statements commenting on proposed amendments to certain rules, including Rule 24(a), RLPR. The specific proposal to Rule 24(a) is to increase costs from \$750.00 to \$900.00. I have two comments on this proposal.

First, there has been some confusion as to whether Rule 24(a) applies to the Director. In fact, I have been unable to locate any case in which costs were awarded to the respondent, as the prevailing party. Therefore, I believe that Rule 24 (a) should specifically provide that costs may be awarded to either the Director or the respondent, with wording such as: ". . . the prevailing party in any disciplinary proceeding decided by this Court, whether it be the Director or the Respondent, shall recover costs in the amount of . . ." It appears the Rule 24(a), as written, leaves this Court with full discretion to determine who is the prevailing party, so the rule should remain unchanged in that respect.

Second, I have no information to either support or refute the Board Chair and Director's joint statement about the office's financial situation, and I assume that this Court can independently determine whether or not the increase in Rule 24(a) costs is economically justified.¹

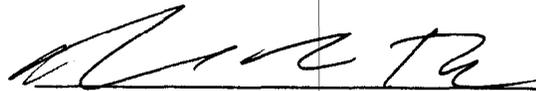
¹. If, as the Director states, the collection of costs constitutes a negligible amount of the Director's revenue -- a mere one to three percent -- then perhaps the increase is not justified.

However, I would like to see this Court continue to take into account the respondent's ability to pay, because discipline itself may limit the attorney's income to pay costs, and because the prosecution leading up to the discipline may drain the attorney's savings. See *In re Benson*, 431 N.W.2d 120 (Minn. 1988) (considering attorney's ability to pay). Also, I would hope that the bi-annual reviews of the Director's performance called for by Rule 5(a), RLPR, takes into account whether or not the Director has focused her efforts wisely. One reason offered for the proposed increase is an "increasing demand for services provided by the Director's office." There are two recent, published examples of the Director expending some effort on charges that had questionable merit: the charge of improperly withdrawing from a representation in *In re Panel File No. 94-24*, 533 N.W.2d 853 (Minn. 1995), and the charge of asserting a non-meritorious claim in *In re Zotaley*, 546 N.W.2d 16 (Minn. 1996). I do not know how much time or energy the Director devoted to proving those specific charges, or others like them, but it would be unfortunate if the expenditure was substantial.

Thank you for the opportunity to present this Statement; I do not wish to make an oral presentation.

SELMER LAW FIRM, P.A.

Dated: May 22, 1996



Marc M. Berg (# 20979x)
Suite 850
Kinnard Financial Center
920 Second Avenue South
Minneapolis, MN 55402
Telephone: (612) 338-1312

MAY - 9 1996

FILED

OFFICE OF
LAWYERS PROFESSIONAL RESPONSIBILITY

MINNESOTA JUDICIAL CENTER
25 CONSTITUTION AVENUE
SUITE 105
ST. PAUL, MINNESOTA 55155-1500

TELEPHONE (612) 296-3952
TOLL-FREE 1-800-657-3601
FAX (612) 297-5801

May 9, 1996

DIRECTOR
MARCIA A. JOHNSON
FIRST ASSISTANT DIRECTOR
KENNETH L. JORGENSEN
ASSISTANT DIRECTORS
CANDICE M. HOJAN
MARTIN A. COLE
BETTY M. SHAW
PATRICK R. BURNS
TIMOTHY M. BURKE
HENRY C. GRANISON
CRAIG D. KLAUSING
ERIC T. COOPERSTEIN

Office of Appellate Courts
25 Constitution Avenue
Room 305
St. Paul, MN 55155

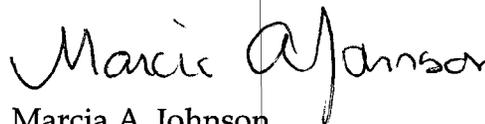
Re: In Re Petition of the Lawyers Professional Responsibility Board
for Amendment of Rules Relating to Registration of Attorneys
Supreme Court File No. C1-81-1206; and
In Re Petition of the Lawyers Professional Responsibility Board
for Amendment of the Rules on Lawyers Professional Responsibility
Supreme Court File No. C1-84-2140

Dear Clerk:

Enclosed for filing are the original and eight copies of Statement in Support of Rule Amendments Proposed by the Lawyers Professional Responsibility Board relating to the Board's Supplementary Petition to Amend the Rules on Lawyers Professional Responsibility, filed March 25, 1996.

Also enclosed are the original and 12 copies of request for Gregory M. Bistram and Marcia A. Johnson to make oral presentations for the supplementary petition and for changes relating to registration of attorneys. On February 12, the Board filed the original petition relating to registration of attorneys and the statement in support..

Very truly yours,



Marcia A. Johnson
Director

tt

Enclosures

cc: Honorable Alan C. Page
Gregory M. Bistram

OFFICE OF
APPELLATE COURTS

MAY 9 1996

FILED

FILE NO. C1-84-2140

STATE OF MINNESOTA

IN SUPREME COURT

RECEIVED

MAY 08 1996

LAWYERS PROF. RESP. OFFICE

In Re Amendment of the Rules on
Lawyers Professional Responsibility.

**STATEMENT IN SUPPORT OF
RULE AMENDMENTS PROPOSED BY
THE LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD**

INTRODUCTION

The Lawyers Professional Responsibility Board (LPRB) has requested in a petition and supplementary petition for three amendments to the Rules on Lawyers Professional Responsibility (RLPR). This statement is submitted in support of the proposed rule amendments.

I. AMENDMENT TO RULE 24

As stated in the petition, the Lawyers Professional Responsibility Board determined at its September 1995 meeting that an increase in the Rule 24, RLPR, costs was necessary and appropriate. Rule 24 costs were last increased nine years ago effective July 1, 1987. The proposed increase of \$150 represents a 20 percent increase from the present costs of \$750. This is the same percentage increase being requested by the discipline system through an increase in attorney registration fees. Attorneys whose misconduct requires the expenditure of disciplinary resources should be required to bear at least a proportionate share of the increasing costs of the discipline system.

II. RULE 30

Non-payment of child support is a growing problem in Minnesota and the nation. Despite an increasing amount of judicial and administrative resources used for enforcement of court-ordered child support, defalcations in Minnesota are growing. According to the figures compiled by the Attorney General's Office, unpaid support

amounted to \$551 million in 1994. By 1995 the amount had increased to \$604 million. Non-payment of support is of public concern both because it affects the welfare of children and because it burdens the taxpayer. Defaulting parents owe the State of Minnesota more than \$150 million in unpaid support assigned to the state in exchange for welfare benefits.

One of the most cost effective tools for enforcement of child support and maintenance orders has been the threat of suspension of driver's licenses and/or occupational licenses.¹ Minnesota is one of 34 states providing for driver's license suspension and one of 36 states providing for occupational license suspension. The Minnesota legislature first enacted a statute (§ 518.551(12)) providing for occupational license suspension in 1992. The statute directed boards and agencies issuing occupational licenses to suspend those licenses upon a finding that the license holder was in arrears in the payment of maintenance or child support upon a report by the district court or a public agency. Because of constitutional separation of powers when an attorney is in arrears, the court or public agency reports the non-compliance to the Director's Office for procedures under the Supreme Court's rules.

In 1994 the Lawyers Professional Responsibility Board received its first reports from county attorneys pursuant to Minn. Stat. § 518.551(12). After extensive discussion, the Board indicated that an appropriate response should reflect the following principles. Attorneys have a greater responsibility to comply with court orders than do other license holders and should not be treated more favorably. License suspension is a very serious matter and the suspension process should be fair.

¹ From 1993 to 1996 the State of Maine collected more than \$28 million dollars from previously non-paying parents through a driver's license suspension program. In 1995-1996 Iowa collected over one million dollars simply by informing 70,000 defaulting parents of the state's authority to seek suspension of their driver's license. California has collected \$17 million using its occupational license suspension law. Massachusetts has collected more than \$90,000. Minnesota has just begun using occupational license suspension and has collected about \$20,000. Figures supplied by Tammy Pust, Minnesota Attorney General's Office.

In the spring of 1995, the legislature amended Minn. Stat. § 518.551(12) to provide additional procedural due process before reporting non-compliance to the Director's Office. Under the statute as amended, a public agency will mail a written notice to a person who owes child support and does not pay for three months. For every licensee except attorneys the notice will state: "You will lose you license in 90 days unless you do one of the following three things - (1) pay so that you do not owe at least three months of child support; (2) negotiate a repayment plan acceptable to the agency; or (3) request an administrative hearing in writing within the next thirty days." If the obligor does nothing, the Department of Human Services issues an order suspending the license and sends it to the licensing agency which notifies the license holder that the license is suspended. If the obligor requests a hearing and the administrative law judge (ALJ) finds that the obligor is at least three months in arrears and not in compliance with a repayment plan, the ALJ issues an order which is sent to the licensing agency. The ALJ's order is appealable to the Court of Appeals in the same manner as a decision by the district court.

For attorneys, the notice from the public agency will state you may lose your attorney license if you do not do one of the following three things. The same options and procedures then apply, except that instead of issuing an order suspending the license, the agency or the ALJ will send a notice to the Director's Office for procedures under the Court's rules.

As a result of the statutory changes, the Board at its September 1995 meeting, directed the filing of a petition for a rule change providing for an administrative suspension upon receipt of a notice from a public agency or court order pursuant to Minn. Stat. § 518.551(12). Proposed Rule 30, RLPR, allows the Director's Office, upon a report by a district court or public authority, to file a motion with the Supreme Court requesting administrative suspension of the attorney until the attorney has paid the

arrears or has entered into and is in compliance with an approved payment plan. The rule provides for suspension without a finding of disciplinary rule violations and without going through formal disciplinary proceedings with a clear and convincing evidentiary standard. The proposed rule also provides for prompt reinstatement upon the attorney's payment of the arrears or compliance with an approved payment plan. In this way, the proposed rule provides for an administrative suspension very similar to that given to licensees in other occupations and professions.

The advantages of proposed Rule 30, RLPR, include: (1) The procedure is much faster and uses fewer scarce disciplinary resources than would procedures under the Minnesota Rules of Professional Conduct; (2) Attorneys are not treated more favorably than other professionals; (3) Where non-compliance does not indicate unprofessional conduct, attorneys will not have a disciplinary record. Where non-compliance indicates a willful disobedience of a court order, the Director's Office will pursue concurrent disciplinary sanctions for violation of Rules 3.4(c) and 8.4(d), Minnesota Rules of Professional Conduct; and (4) When an administratively suspended attorney becomes in compliance, there is an expeditious reinstatement process.

III. RULE 9(b)

Rule 9(b)(2), RLPR, provides for a tender of admission to some or all of the charges conditioned upon a stated disposition. This rule parallels the conditional admission provided for by Rule 13(b), RLPR, prior to January 1, 1989. There is currently no rationale for a conditional admission of charges, since the Court, by order dated September 14, 1988, deleted the provision for a conditional admission to a petition for disciplinary action. Repeal of the conditional admission to charges rule will

not prevent or hinder settlement of disciplinary cases. The conditional admission provision of Rule 9(b)(2), RLPR, has not been used at least since 1989.

Dated: May 8, 1996.

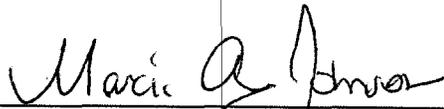
Respectfully submitted,



GREGORY M. BISTRAM, CHAIR
LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

Attorney No. 8503
25 Constitution Avenue, Suite 105
St. Paul, MN 55155-1500
(612) 296-3952

and



MARCIA A. JOHNSON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 182333

OFFICE OF
APPELLATE COURTS FILE NO. C1-81-1206 and C1-84-2140

MAY 9 1996

STATE OF MINNESOTA

FILED

IN SUPREME COURT

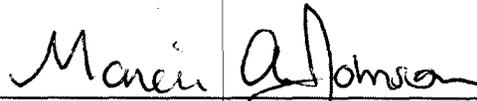
In Re Petition to Amend the Rules
Relating to Registration of Attorneys and the
Rules on Lawyers Professional Responsibility

**REQUEST TO MAKE
ORAL PRESENTATION**

The Lawyers Professional Responsibility Board requests leave for Gregory M. Bistram, Chair of the Lawyers Professional Responsibility Board, and Marcia A. Johnson, Director of the Office of Lawyers Professional Responsibility, to address the Court concerning the Lawyers Professional Responsibility Board petitions to amend the Rules Relating to Registration of Attorneys and the Rules on Lawyers Professional Responsibility.

Dated: May 9, 1996.

Respectfully submitted,



MARCIA A. JOHNSON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 182333
25 Constitution Avenue, Suite 105
St. Paul, MN 55155-1500
(612) 296-3952